

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT General Services Agency	(2) MEETING DATE 10/8/2013	(3) CONTACT/PHONE Janette Pell, General Services Agency Director 805-781-5200	
(4) SUBJECT Request to provide direction to staff on release of deed restriction for Port San Luis Harbor District's (District) downtown parking lot at First and San Francisco Streets in Avila Beach. District 3.			
(5) RECOMMENDED ACTION It is recommended that the Board provide direction to staff to pursue one of the following options: <ol style="list-style-type: none"> <li>1. Remove the deed restriction by recording a quitclaim deed, to be approved by the Board on a future consent agenda, or</li> <li>2. Revise the deed restriction to eliminate the 365 day per year parking requirement by recording a Modification of Deed Restriction to be approved by the Board on a future consent agenda <b>(staff's preferred recommendation)</b>, or</li> <li>3. Replace the deed restriction with one requiring County's approval for District to sell or mortgage the property by recording a Modification of Deed Restriction to be approved by the Board on a future consent agenda <b>(staff's alternative recommendation)</b>, or</li> <li>4. Leave the existing deed restriction in place until such time as a future project is identified for the property.</li> </ol>			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____ ) <input checked="" type="checkbox"/> Board Business (Time Est. <u>30 min.</u> )			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)  n/a		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: n/a <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A    Date: <u>4/2/2013, 5/21/2013</u>	
(17) ADMINISTRATIVE OFFICE REVIEW  Emily Jackson			
(18) SUPERVISOR DISTRICT(S) District 3 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: General Services Agency  
Janette Pell, General Services Agency Director  
805-781-5200

DATE: 10/8/2013

SUBJECT: Request to provide direction to staff on release of deed restriction for Port San Luis Harbor District's downtown parking lot at First and San Francisco Streets in Avila Beach. District 3.

## **RECOMMENDATION**

It is recommended that the Board provide direction to staff to pursue one of the following options:

1. Remove the deed restriction by recording a quitclaim deed, to be approved by the Board on a future consent agenda, or
2. Revise the deed restriction to eliminate the 365 day per year parking requirement by recording a Modification of Deed Restriction, to be approved by the Board on a future consent agenda (**staff's preferred recommendation**), or
3. Replace the deed restriction with one requiring County's approval for District to sell or mortgage the property by recording a Modification of Deed Restriction to be approved by the Board on a future consent agenda (**staff's alternative recommendation**), or
4. Leave the existing deed restriction in place until such time as a future project is identified for the property.

## **DISCUSSION**

### **Background**

In 1983, the County of San Luis Obispo deeded a large parking lot at the intersection of First Street and San Francisco Street in downtown Avila Beach to the Port San Luis Harbor District (District). The parking lot currently provides 377 parking spaces for visitors to the beaches and businesses of Avila Beach. A map showing its location is attached (Attachment #1). The deed (Attachment #2) was subject to a restriction to protect the use of the property for public parking. Deed restrictions that protect the public purpose of a property are common practice when real property is transferred between government entities.

The deed restriction prohibits the use of the parking lot for commercial or residential development and requires that the parking lot should be "substantially open and available" for public parking, which is defined as no less than 300 parking spaces being available for use by the general public 365 days per year. The County retains the right to terminate the deed, reverting ownership back to the County, in the event that the parking restriction is violated or in the event that the District were to no longer operate and maintain the physical beach at Avila Beach. An Agreement for the Operation of Avila Beach Recreational Facilities that was executed with the 1983 deed further clarifies that "it is specifically not the intention of the parties hereto to preclude development of commercial facilities but rather to limit said development on said Parking Lot in recognition of the critical need for parking in the Community of Avila Beach." Limited future development of the parking lot has been and continues to be a potential project identified by the District.

California Civil Code section 880.030 states that the right to terminate a deed expires thirty years after the deed containing such right is recorded. Without the power to terminate, the deed restrictions are effectively void. On May 21, 2013, the Board renewed the power to terminate to enforce the deed restriction for an additional thirty years by filing a Notice of Intent to Preserve Interest (Attachment # 3). The Board also directed staff to return with a presentation of the Harbor District's parking plan and for reconsideration of terminating the deed restriction at that date.

### Parking Management Plan

The District, with grant funding from the San Luis Obispo Council of Governments, has recently completed and adopted a Parking Management Plan for the harbor, Avila Beach Drive, and the Avila Beach town core areas. The entire plan document can be viewed at the District's website at <http://www.portsanluis.com/meetings/harbor-commission-meeting-agendas/agendas/2013-05-28/discussion-item-ab-final-parking-management-plan.pdf>. Several of the recommendations will require Coastal Development Permit approvals and funding, and some of the recommendations of the plan may not be implemented. The table below appears on page 55 of the plan. It lists the proposals in the parking plan and divides them into Short-term and Long-term Action Items. It also names the agencies to develop and approve the plan and defines the key issues necessary to implement the plan.

Strategy	Lead Agency	Support Agency(s)	Key Issues
<b>Short-term Action Items</b>			
Harbor Parking Pass Program	Harbor District	Coast Commission	Coastal Commission approval
Harbor Parking Meters	Harbor District	Coast Commission	Coastal Commission approval
Town Core Parking Meters	Harbor District	Coast Commission & County	Coastal Commission & County approval
Residential Parking Program	County	Coast Commission	Coastal Commission & County approval
Delivery Parking Designation	County		County approval
Enforcement- Harbor Lots	Harbor District	Coast Commission	Coastal Commission approval
-On-street parking	County	Coast Commission & Harbor District	Coastal Commission & County approval
Boat Trailer Parking	Harbor District	Coast Commission	Coastal Commission approval
Expanded Pismo Beach Trolley Service	SLORTA	SLOCOG & County	Funding
New San Luis Obispo-Avila Transit service	SLORTA	SLOCOG & County	Funding
Towne Trolley	SLORTA	Harbor District	Funding & procurement of trolley
<b>Long-term Action Items</b>			
Satellite Parking Lots	County	County & SLOCOG	Funding
Town Parking Structure	Harbor District	Coast Commission & County	Coastal Comm & County approval & funding
Harbor Terrace Development Parking	Harbor District	Coast Commission & County	Coastal Commission & County approval
Boat Trailer Parking in Terrace Area	Harbor District	Coast Commission	Coastal Commission approval
Private parking for overflow	County	Coast Commission & County	Coastal Commission & County approval

The parking lot at First Street and San Francisco Street is referred to as the Town Parking Lot in the parking plan. The parking plan proposes that the current daily pass program be expanded at the Town parking lot to offer a new monthly pass for employers and employees of local businesses. The plan also advises upon future development options for the Town Parking Lot. One option is to add a parking structure comprised of an upper deck with 325 parking stalls to be built above the existing parking area, increasing parking from 377 stalls to 702 stalls. The cost of the parking deck is estimated to be in excess of \$7,150,000, with funding necessary from "a combination of grants, County Parking In-lieu funds and potentially the bonding capacity of the Harbor District."

A second option described in the report is to “sell or lease the development rights to the Town parking lot and allow a developer to build a mixed use project on the site.” The developer would be required to construct a minimum number of parking stalls to be used by the public. The parking plan envisions retail and offices on the ground floor and parking on the second and third floors.

The parking plan does not recommend pursuing either of the above parking structure scenarios at this time, noting that it requires “substantial financial assistance to be viable.” and that it should be compared against the District’s proposal to build satellite parking lots on County-owned land outside of the Avila downtown area. A statement titled “Port San Luis Harbor District, Avila Parking Lot” (Attachment #4) was provided by the District on September 5, 2013, describing the District’s vision for the parking lot. The statement points to the District Master Plan in which the main purpose of the parking lot is identified as providing parking to support visitors to Avila Beach and Pier and using the revenues from the parking fees for beach maintenance and operations. The statement also points out that the District “may consider removing parking spaces... for development of commercial or visitor-serving transient uses as a revenue generator to offset the costs of the beach and pier expense.” Although the District does not intend to pursue the development option at this time, they anticipate that such development would result in a maximum loss of 17 parking spaces.

It is evident from the Parking Management Plan and the District Master Plan that a great deal of emphasis is placed by the District in providing adequate parking to the public. The following four alternatives discuss whether or not the County Board of Supervisors should continue to maintain a role in assuring that parking remains the primary purpose of the parking lot property through a deed restriction.

#### Alternatives for the Board’s Consideration

##### (1) Remove the deed restriction by recording a quitclaim deed, to be approved by the Board on a future consent agenda

The Harbor Commission has submitted the attached letter dated September 4, 2013 (Attachment #5), reiterating their April 26, 2013 request that the County remove the deed restriction on the Town parking lot to allow the District to manage the property without additional County oversight. The letter states, “Regardless of District intent, the use of the parking lot is constrained within a regulatory context, as described below,” which is followed by an explanation of the influences of the Coastal Act, San Luis Bay Area Plan, Harbor District Master Plan, and Parking Management Final Report. It goes on to say, “In summary, from the Coastal Act to the Parking Management Report, the intentions of and limitations on the District are clear, and the District will continue to manage the assets it holds in trust for the public, for the benefit of that same public.”

District staff continues to advocate for the rights of the District to develop the property as proposed in the County’s general plan documents and in the District’s master plan. The Avila Beach Specific Plan adopted by the Board in October 2000 envisions the parking lot to be developed with multi-family housing or lodging, provided that at least 355 of the 377 existing parking spaces remain. The District’s 2004 Master Plan (revised in 2007) identifies an “Opportunity Site” that would remove 17 parking spaces along First Street to create new lease space opportunities, possibly commercial units or lodging that would generate revenue to offset the costs of maintaining the beach and pier. Utilizing the parking lot for off-season special events is also proposed in the District’s Master Plan.

Staff concurs with the District’s statement that “the District has been and continues to be a responsible steward of facilities under its control, and has placed a priority on preserving the public’s interest.” No criticism is intended of the District’s management of the property on behalf of the public, and staff acknowledges that the County and the Coastal Commission have planning jurisdiction over future development plans for the property. Planning documents, however, are guidelines for development and are subject to change or interpretation. On the other hand, deed restrictions exert absolute control over the future of the property and are useful in protecting a public asset. Deed restrictions make it more difficult to sell the property to a private party who might seek to develop the property or to use the property as collateral for a mortgage, since the allowed uses of the property are greatly constricted. Deed restrictions are very commonly put in place whenever one government agency transfers property to another government agency. For example, when the federal government deeded El Chorro Regional Park to the County, they did so with the deed restriction that it be used for public park or public recreational purposes, and approval from the National Parks Services is required for any new uses of the property proposed by the County.

Staff does not support the proposal to remove the deed restriction from the District parking lot for the following reasons:

- The deed restriction links the management and revenue from the parking lot to the requirement to maintain the beach area. It was the intention of the State and of the County that the parking lot would be linked to provide continuous revenue to maintain the beach and pier. The deed restriction links those purposes.
- The specific requirement of no less than 300 parking spaces cannot be reduced through the planning process without the Board's approval of a revised deed restriction.
- If the District were to sell or mortgage the property to fund a private/public project, as proposed in the Parking Report, it could be lost to foreclosure and be acquired by a private party. Without a deed restriction, future development restrictions would rely solely on the planning process.
- If the District were to become bankrupt, the property could be acquired by a private party. Without a deed restriction, future development restrictions would rely solely on the planning process.
- The County gave this property to the District at no cost for the purpose of public parking, and the County is currently a partner with the District in the protection of this property for public parking. An arrangement of dual oversight is very common between government entities.

If the Board elects to proceed with removal of the deed restriction, staff will return with a quitclaim deed on a future consent agenda to release any interest that the County may have in the property. County Planning advises that a Coastal Development Permit may be required to be filed prior to any change of use on the site, as well as any review for potential impacts under the California Environmental Quality Act (CEQA).

(2) Revise the deed restriction to eliminate the 365 day per year parking requirement by recording a Modification of Deed Restriction, to be approved by the Board on a future consent agenda (staff's preferred recommendation)

In order for the 2013 Amgen Tour of California to stage at the parking lot in Avila Beach, the Board approved a temporary waiver of deed restriction on April 2, 2013. Since the deed restriction requires that 300 parking spaces be available to the general public "not less than 365 days per year," there is no flexibility for the District to offer the parking lot for special events without a temporary waiver, which must be approved by the Board.

The intention to allow special events was originally expressed by District staff to County staff in December 2012 when discussing the Amgen request. It is also expressed on page 1-23 of the District's Master Plan, as follows:

*"The Avila Community has shown interest in using the Avila parking lot to hold special events. The Port is interested in entertaining this idea during off-season months when the parking lot typically has available capacity."*

It was not until the County informed the District of the County's intention to record the Notice of Intent to Preserve Interest to prevent the deed restrictions from expiring that the District changed their request from revision of the deed restriction to removal of the deed restriction. Staff has always supported the District in their desire to allow special events in the parking lot as a source of revenue to the District and as an expansion of recreational activities in Avila Beach.

Substituting the words "from Memorial Day weekend to Labor Day weekend" in place of "365 days per year" in the deed restriction would remove the necessity for a temporary waiver of deed restriction and would allow the District to work directly with County Planning for special event permits, as needed. The deed restriction would continue to provide protection that at least 300 parking spaces would remain available during the peak season and would still allow the District to develop the remainder of the property (within the limitations of the planning documents and any necessary Coastal Development Permit approvals with CEQA review).

Staff recommends Alternative (2) and proposes to return to the Board on a future consent agenda with a Modification of Deed Restriction substituting the words "from Memorial Day weekend to Labor Day weekend" in place of "365 days per year". This option is a cautious approach that continues to have the County involved in oversight of the property. Prior approval of the District would be required on the Modification of Deed Restriction, which the Harbor Commission may choose not to support. In that event, the existing deed restriction would remain in place. Since revision of the deed restriction may result in an increase in the intensity of the use of the property, County Planning advises that a Coastal Development Permit with CEQA review may be required.

(3) Replace the Deed Restriction with one requiring County's approval for District to sell or mortgage the property by recording a Modification of Deed Restriction to be approved by the Board on a future consent agenda (staff's alternative recommendation)

Staff's greatest concern about removing the deed restriction on the parking lot property is the risk that the property could end up in private ownership. This could occur through sale, foreclosure, or bankruptcy, and is a significant concern if the property should be sold or mortgaged to fund a private/public project on the property, as is proposed in the Parking Management Plan. Without a deed restriction, the only level of control of the future use of the property is the planning process.

In the District's letter dated September 4, 2013 (Attachment #5), the final paragraph offers a secondary proposal in the event that the County is unwilling to remove the deed restriction. The letter states, "Should the Board deem it necessary however, District staff and counsel will work with County staff and counsel to craft the least restrictive deed restriction that protects the public interest if the District, at some point in the future, seeks to encumber the lot in any manner."

If the Board does not support Alternative (2), then staff secondarily proposes Alternative (3) rather than to remove the deed restriction entirely. Alternative (3) would provide the additional level of a County review of the financial solidity of a financing plan to develop the parking lot and appropriate conditions being placed in the sale or development contract before putting the public asset at risk. It also provides that the County would be in first position to cure any defaults before allowing the property to be lost to foreclosure, presuming that some repayment agreement could be worked out with the District. With approval of the Harbor Commission, a Modification of Deed would be recorded to state:

*"The property shall be held by the Port San Luis Harbor District and shall revert to the County, upon demand by the County, should the Port San Luis Harbor District sell, mortgage or encumber the property without the County's prior written consent, which consent may be withheld in the County's sole and absolute discretion. County shall have the right, in its discretion, to cure any default prior to a foreclosure of the property."*

Although the wording proposed by the District only addresses the potential encumbrance of the property, County Counsel advises that the sale restriction also be added, since a sale could place the property in private ownership. Since revision of the deed restriction may result in an increase in the intensity of the use of the property, County Planning advises that a Coastal Development Permit with CEQA review may be required.

(4) Leave the existing deed restriction in place until such time as a future project is identified for the property:

The fourth option for the Board's consideration is to make no changes to the existing deed restriction until such time as a project is proposed for the property. Staff does not recommend this course of action because it would mean that the District could not use the parking lot for any special events in the off-season without requesting a temporary waiver of deed restriction from the County, which would be needed prior to Planning approvals. The staff time for both the County and the District required to process the temporary waiver is significant, and it requires a fair amount of advance notice.

**OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel has advised on the proposed wording of a revised deed restriction and the impacts of a revision. The Harbor Commission discussed the deed restriction at their August 27, 2013 meeting and directed staff to send a letter to the Board requesting the deed restriction be removed (Attachment #5). County Planning and Building has advised General Services regarding the general and specific plans as it applies to the property, and regarding the potential for a CEQA determination if the deed restriction is removed or revised.

**FINANCIAL CONSIDERATIONS**

There are no financial considerations to the County with respect to the four alternatives presented. There is a potential for

increased revenue to the District in the event that the deed restriction is revised or removed, which has been one obstacle to the District's ability to rent the parking lot for special events in the off-season. The District would still be required to obtain Planning approvals.

## **RESULTS**

The results of today's action by the Board will depend on the direction that the Board gives to staff and the response from the Harbor Commission. If the Board supports staff's recommendation #2 and the Harbor Commission agrees, then the deed restriction for the town parking lot at Avila Beach will be revised (subject to a CEQA determination) to replace the requirement to make 300 general public parking spaces available 365 day per year with one requiring 300 spaces to be available only during the peak summer season. This action will contribute to the Communitywide Goal of a Livable Community by protecting a public asset to the greatest extent possible while reducing obstacles that may result in generating income for the District and increasing recreational opportunities for county residents.

## **ATTACHMENTS**

1. Location Map
2. 1983 Deed
3. Notice of Intent to Preserve Interest
4. District's Statement 9-5-13
5. District's Letter 9-4-13